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BIRELLO; REGINALD PARSON; OSVALDO  
DEL VALLE; KENNETH MONTEIRO; BRIAN  
STUART; AND MARK JARAMILLA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JACOB MANDEL, et al.

Plaintiffs,

vs.

BOARD OF TRUSTEES OF THE  
CALIFORNIA STATE UNIVERSITY,  
SAN FRANCISCO STATE  
UNIVERSITY, et al.,

Defendants.

CASE NO. 3:17-cv-03511-WHO

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE TO  
FILE SUPPLEMENT TO SECOND  
AMENDED COMPLAINT**

Judge: Hon. William Orrick III  
Dept: Courtroom 2, 17th Floor  
Date: August 8, 2018  
Time: 2:00 p.m.

1 Defendants respectfully submit that Plaintiffs' motion for leave to supplement the Title VI  
2 claims in their Second Amended Complaint ("SAC") should be denied as futile. *See Obregon v.*  
3 *Sessions*, No. 17-cv-01463-WHO, 2017 WL 3478774 at \*2 (N.D. Cal. August 14, 2017) ("futility  
4 may, on its own, justify denying a motion for leave to supplement and 'futile amendments should  
5 not be permitted'") (citing *Klamath-Lack Pharm. Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d  
6 1276, 1293 (9th Cir. 1983).

7 As demonstrated in Defendants' pending motion to dismiss, the SAC fails to state a claim  
8 under Title VI for numerous reasons. Plaintiffs do not even contend that their supplemental  
9 allegations would cure any of the defects identified in Defendants' Motion. *See* Motion at 7  
10 ("Plaintiffs' SAC does not depend on the additional facts alleged in the proposed Supplement").  
11 Plaintiffs' Title VI claims are deficient either with or without the supplemental allegations, and  
12 the motion to supplement should therefore be denied as futile.

13 Notably, the proposed allegations reveal that the events about which Plaintiff Gershon  
14 would complain were first reported to Defendants on May 22, 2018, approximately one month  
15 ago. Proposed Supplement ¶ 11. The proposed allegations further disclose that SFSU's Title IX  
16 office (which also handles Title VI complaints) responded the next day, requesting a meeting  
17 about Ms. Gershon's allegations. *Id.* While Plaintiffs propose to allege that "no meeting has  
18 taken place," they fail to disclose that multiple communications have occurred in an effort by  
19 SFSU to schedule a meeting in a manner consistent with the fact that Plaintiffs' counsel of record  
20 in this case intends to attend the meeting with SFSU's Title IX office. Plaintiffs' proposed  
21 supplemental allegations could not remotely support a claim of "deliberate indifference" on the  
22 part of Defendants, which is a necessary element of their Title VI claim.

1 DATED: June 27, 2018

Respectfully submitted,

2 MUNGER, TOLLES & OLSON LLP  
3 BRADLEY S. PHILLIPS  
4 ADELE M. EL-KHOURI

5 By: /s/ Bradley S. Phillips  
BRADLEY S. PHILLIPS

6 Attorneys for Defendants  
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